

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Entergy Services, Inc.

Docket No. ER05-959-000

ORDER ACCEPTING AND SUSPENDING FILING AND ESTABLISHING
HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued August 24, 2005)

1. On May 12, 2005, Entergy Services, Inc., acting as agent for Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (Entergy), filed its annual informational filing containing two sets of rate sheets. The first set contains its 2005 rate redetermination (2005 Redetermination) in accordance with the annual rate redetermination provisions of Appendix 1 to Attachment H and Appendix A to Schedule 7 of its Open Access Transmission Tariff (OATT). The second set of rate sheets includes a summary of the 2005 annual rate redetermination update (2005 Update) that is consistent with the formula contained in the settlement agreement (Settlement) of Entergy's 2004 annual rate redetermination filing in Docket No. ER04-886-000, which the Commission had not acted on at the time of Entergy's filing. We will accept the 2005 Redetermination for filing and suspend it for a nominal period to become effective June 1, 2005, as requested, subject to refund. Further, we will accept the 2005 Update for filing and suspend it for a nominal period to become effective July 1, 2005, as requested, subject to refund. We will also establish hearing and settlement judge procedures.

Background

2. Entergy's OATT provides for an annual redetermination of rates for long-term and short-term firm point-to-point transmission service, for non-firm transmission service, and for network integration transmission service, based on actual data for the

immediately preceding calendar year.¹ Entergy makes the rate redetermination filing on or about May 1 of each year with the redetermined rates becoming effective for bills rendered on or after June 1 of that year for service during the preceding calendar month and remaining in effect for twelve months. Rates are determined according to the formula rates as defined in Entergy's OATT.

3. Entergy's OATT provides that all parties, including the Commission's staff, shall have 120 days after each annual informational filing to review the redetermined rates and to file a complaint with the Commission regarding them. It also provides that the redetermined rates are subject to refund or surcharge until the latest of: (1) the end of the 120-day review period, if at such time there is no outstanding, unresolved complaint, (2) the final resolution of any complaint filed; or (3) the completion of any required corrections.²

Entergy's Filing

4. Entergy filed its 2005 Redetermination on May 12, 2005 and requested an effective date of June 1, 2005. Entergy states that because the Commission had not yet accepted for filing the formula rate changes contemplated by the Settlement in Docket No. ER04-886-000, the 2005 Redetermination is based upon the rate formula in effect prior to approval of the Settlement.

5. Entergy also filed a 2005 Update prepared consistent with the Settlement rate formula, along with supporting workpapers. Entergy proposes to start billing the rates set forth in the 2005 Update effective the first of the month following the Commission's acceptance of the Settlement, with any refunds and/or surcharges for the period between June 1, 2004 and that date to be made at the conclusion of the proceeding. Moreover, Entergy explains that the Settlement provides that for subsequent Entergy annual informational filings, Entergy shall undertake reasonable best efforts to identify, if any, changes in Entergy's accounting policies and procedures that Entergy reasonably believes could have a meaningful impact on the rates proposed in such filings. Entergy states that it found no accounting changes that materially affected transmission rates.

¹ The annual rate redetermination formula was first established in a partial settlement approved by the Commission in Docket No. ER95-112-000. *Entergy Services, Inc.*, Opinion No. 430, 85 FERC ¶ 61,163 (1998), *order on reh'g*, 91 FERC ¶ 61,153 (2000).

² See Entergy's OATT, Schedule 7 at 7.

6. Entergy requests waiver of the Commission's prior notice requirement.

Entergy's Settlement in Docket No. ER04-886-000

7. On May 27, 2004, in Docket No. ER04-886-000, Entergy filed its annual informational filing containing the 2004 rate redetermination for firm and non-firm transmission service rates under Entergy's OATT. On September 20, 2004, the Commission set for hearing the determination of whether the proposed transmission rates in the 2004 annual rate redetermination filing were just and reasonable.³

8. On April 4, 2005, Entergy submitted a Settlement in the 2004 annual rate redetermination proceeding in Docket No. ER04-886-000. Commission trial staff filed a comment in support of the Settlement. On May 4, 2005, the settlement judge in that proceeding certified the Settlement to the Commission as an uncontested settlement.⁴

9. On June 16, 2005, after Entergy filed its 2005 redetermination and 2005 Update, the Commission issued an order approving the Settlement in Docket No. ER04-886-000.⁵ As a result, the Settlement resolves all issues regarding the appropriate rates and revenue requirement for transmission billing on Entergy's transmission system from June 1, 2004, through May 31, 2005. The Settlement also sets forth, among other things, certain amendments to Entergy's OATT formula rate in order to implement the parties' agreements concerning un-refunded prepayments for transmission customers.

Notice, Interventions and Protests

10. Notice of the filing was published in the *Federal Register*, 70 Fed. Reg. 29,729 (2005), with protests or interventions due on or before June 2, 2005. Timely motions to intervene were filed by: Duke Energy Marketing America, LLC and Duke Energy Trading and Marketing, L.L.C. (jointly); East Texas Electric Cooperative, Inc., Sam Rayburn G&T Electric Cooperative, Inc., and Tex-La Electric Cooperative of Texas, Inc. (jointly); Lafayette Utilities System (Lafayette) and the Municipal Energy Agency of Mississippi (MEAM). A timely motion to intervene and a joint protest was filed by Mississippi Delta Energy Agency and its members, the City of Clarksdale, Mississippi and the City of Yazoo City, Mississippi, South Mississippi Electric Power Association, and Arkansas Electric Cooperative Corporation

³ See *Entergy Services, Inc.*, 108 FERC ¶ 61,252 (2004).

⁴ See *Entergy Services, Inc.*, 111 FERC ¶ 63,027 (2005).

⁵ See *Entergy Services, Inc.*, 111 FERC ¶ 61,405 (2005).

(collectively, Joint Intervenors). Entergy filed an answer in response to the protests. In addition, untimely motions to intervene were filed by Arkansas Cities and Cooperative (ACC);⁶ and NRG Power Marketing, Inc., Louisiana Generating LLC, Bayou Cove Peaking Power LLC, Big Cajun I Peaking Power LLC, and NRG Sterlington Power LLC (collectively, NRG Companies).

11. Joint Intervenors state that the rates proposed in the filing may be excessive and therefore unjust and unreasonable and unduly discriminatory. Joint Intervenors request that the Commission clarify that the formula changes provided under the Settlement will be effective as to the 2005 Update as of June 1, 2005. Joint Intervenors assert that the refunds of the difference between the 2005 Redetermination, based upon the pre-Settlement formula, and the 2005 Update proposal, reflecting the formula changes agreed to in the Settlement, should not be delayed until the end of the instant proceeding.

12. Joint Intervenors further contend that Entergy has not explained various significant changes in its 2005 Update filing from the preceding year's data (based upon the pre-Settlement formula), which have the effect of raising rates. These changes include transmission labor expense, transmission operations and maintenance (O&M) expense, unamortized regulatory asset (URA) and regulatory asset related expense (RA), RTO-related costs, accounting policies and procedures, rate divisor and short-term and non-firm transmission revenue credits.

13. Joint Intervenors assert that Entergy's filing lacks necessary explanations and supporting documentation for determining the appropriateness of the various cost increases. Joint Intervenors suggest that it appears that Entergy has overstated the transmission payroll expense and understated the total system payroll expense, thus overstating the transmission payroll allocation factor. Joint Intervenors state that additional analysis will be required to confirm the basis for the almost nine percent increase in Entergy's transmission O&M expense. Moreover, they assert that the inclusion of URA and RA costs was agreed to in the Settlement, but requires additional analysis and discovery to confirm the reasonableness of the size of the adjustments to these costs included in the 2005 Update.

14. Joint Intervenors claim that they have not yet been able to confirm the exclusion of all non-de minimis RTO-related expenses from Entergy's 2005 Update filing. Joint Intervenors argue that previously, Entergy has removed most, if not all,

⁶ ACC consists of the City of Prescott, Arkansas; the Conway Corporation; the West Memphis, Arkansas Utilities Commission and Farmers Electric Cooperative Corporation (FECC).

of its Electric Power Research Institute (EPRI) Dues Expense from administrative and general (A&G) expense, but, in its 2005 Update, Entergy appears to have booked all EPRI Dues Expense to Account 506, Miscellaneous Steam Power Expense. They maintain that further analysis is required to confirm that all loads have been properly accounted for in the determination of Entergy's TKW rate divisor.⁷ Furthermore, Joint Intervenors assert that additional analysis is required to determine whether all revenue credits and loads have been accounted for and reconciled in Entergy's filing to ensure that Entergy's revenue requirements and rates are not excessive.

15. Joint Intervenors argue that discovery is necessary to determine what costs are driving a rate increase of this magnitude, and request that the Commission suspend the matter and set it for hearing and refund.

16. ACC adopts by reference the substantive comments filed by Joint Intervenors in this proceeding. In addition, ACC expresses concern regarding the increase in long-term firm transmission service rates.

Discussion

A. Procedural Matters

17. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), the timely, unopposed motions to intervene serve to make those who filed them parties to this proceeding. We will grant ACC's and NRG Companies' motions to intervene out of time, given their interest, the early stage of this proceeding, and the absence of undue prejudice or delay.

18. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2005), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept Entergy's answer and will, therefore, reject it.

⁷ In support of this view, Joint Intervenors note that the City of Jonesboro load has been removed from the total demand divisor. Pursuant to the settlement agreement in Docket No. ER04-683-000, Joint Intervenors state they have agreed not to oppose this treatment for this Update. However, Joint Intervenors argue that agreement is limited to the 2005 Update. Joint Intervenors contend they reserve the right to protest any proposed treatment of the Jonesboro load in any future update.

B. Proposed Annual Rate Redetermination

1. Entergy's 2005 Redetermination and Update

19. Entergy's 2005 Redetermination and Update raise issues of material fact that cannot be resolved based on the record before us, and are more appropriately addressed in the hearing and settlement judge procedures ordered below.

20. Our preliminary analysis indicates that Entergy's 2005 Redetermination and Update have not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we will accept Entergy's 2005 Redetermination for filing, suspend it for a nominal period, make it effective June 1, 2005,⁸ as requested, subject to refund, and set it for hearing and settlement judge procedures. Moreover, we will accept Entergy's 2005 Update for filing, suspend it for a nominal period, make it effective July 1, 2005,⁹ as requested, subject to refund, and set it for hearing and settlement judge procedures.

21. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.¹⁰ If the parties desire they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.¹¹ The settlement judge shall report to the Chief Judge and the Commission within 60 days of the date of this order concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, or provide for commencement of a hearing by assigning the case to a presiding judge.

⁸ See *Central Hudson Gas & Electric Corporation*, 60 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,089 (1992).

⁹ *Id.*

¹⁰ 18 C.F.R. § 385.603 (2005).

¹¹ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge in writing or by telephone at (202) 502-8500 within five (5) days of the date of this order. FERC's website contains a listing of the Commission's judges and a summary of their background and experience (www.ferc.gov – click on Office of Administrative Law Judges).

2. Refunds

22. Joint Intervenors argue that the refunds of the difference between the 2005 Redetermination and the 2005 Update proposal should not be delayed until the end of the instant proceeding, as proposed by Entergy. Rather, it asserts that Entergy should be required to make two sets of refunds: (1) a refund after the Commission's approval of the Settlement and (2) a refund at the end of this proceeding to account for any difference between the 2005 rates (as modified by the Settlement) and the rates ultimately agreed upon in this proceeding. We disagree. This would impose an undue and unnecessary administrative burden on Entergy. The first refund sought by Joint Intervenors should be minimal given that it would be for only a one month-period. Further, Joint Intervenors will receive interest on all refunds consistent with the Commission's rules. Thus, we conclude that requiring Entergy to make one refund at the end of this proceeding is the most administratively efficient way to proceed.¹²

The Commission orders:

(A) Entergy's proposed 2005 Redetermination is hereby accepted for filing and suspended for a nominal period, to become effective June 1, 2005, as requested, subject to refund, as discussed in the body of this order. Entergy's proposed 2005 Update is hereby accepted for filing and suspended for a nominal period, to become effective July 1, 2005, as requested, subject to refund, as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R., Chapter I), a public hearing shall be held concerning Entergy's 2005 Redetermination and Update. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Paragraphs (C) and (D) below.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2005), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties

¹² We note that the formula rate changes under the Settlement in Docket No. ER04-886-000 will be effective with respect to Entergy's filing as of June 1, 2005.

enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge in writing or by telephone within five (5) days of the date of this order.

(D) Within sixty (60) days of the date of this order, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(E) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a conference in this proceeding in a hearing room of the Commission, 888 First Street, N.E., Washington, DC 20426. Such conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates, and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.